

October 24, 1997
L-97-43

CERTIFIED

Honorable Henry B. Buslee
Circuit Court Branch III
160 S. Macy Street, Second Floor
Fond Du Lac, Wisconsin 54936-1355

Re: M. J. K., et al v. J.J.L.,
et al, Case No. 97CV00187
S.S.A. No.
C. 2872-97

Dear Judge Buslee:

This letter is respectfully submitted for the purpose of advising the court and the parties in the above-captioned matter of the following:

The Railroad Retirement Board (RRB), a named party defendant in this case, is an independent agency in the Executive branch of the United States Government which is charged with the administration of the Railroad Retirement Act (45 U.S.C. § 231, et seq.)(RRA) and the Railroad Unemployment Insurance Act (45 U.S.C. § 351, et seq.) (RUIA). Under the RUIA, the RRB paid \$9540.32 in sickness benefits to the plaintiff, M J. T., a.k.a. M.J. K., as a result of his claims for same based on an injury of August 26, 1994. He named J. J. L., defendant, as alleged tortfeasor, and State Farm Insurance Company as the insurance company for J. J. L.. Both L. and State Farm, as well as T., were sent notices of lien under section 12(o) of the RUIA (45 U.S.C. § 362(o)) which provides, as follows:

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"Benefits payable to an employee with respect to days of sickness shall be payable regardless of the liability of any person to pay damages for such infirmity. The Board shall be entitled to reimbursement from any sum or damages paid or payable to such employee or other person through suit, compromise, settlement, judgment, or otherwise on account of any liability (other than a liability under a health, sickness, accident, or similar insurance policy) based upon such infirmity, to the extent that it will have paid or will pay benefits for days of sickness resulting from such infirmity. Upon notice to the person against whom such right or claim exists or is asserted, the Board shall have a lien upon such right or claim, any judgment obtained thereunder, and any sum or damages paid under such right or claim, to the extent of the amount to which the Board is entitled by way of reimbursement."

Under section 12(o), the RRB has a lien against "any sum or damages" paid or payable by reason of liability for an injury or infirmity to a person to whom benefits have been paid by it on account of the same injury or infirmity. The section 12(o) lien is an independent Federal statutory lien and the RRB's right of reimbursement thereunder for sickness benefits paid does not rest on subrogation. Section 12(o) neither assigns to the RRB nor does the RRB derive therefrom any rights to which its beneficiary may be entitled.

Under 20 CFR 341.9(b) the RRB cannot be involuntarily joined "in any action for damages brought by an employee claiming sickness benefits under the Railroad Unemployment Insurance Act." In this case the RRB has not submitted an admission of service; the United States has not waived its sovereign immunity from suit; and the plaintiff has not alleged any special grounds for the court's jurisdiction.

It should be noted that the RRB's lien under section 12(o) and its regulations set forth in 20 CFR 341, which provide guidelines for the parties in this matter, clearly establish that all parties who received a notice of lien are jointly and severally liable for reimbursement of sickness benefits paid by this agency. The RRB may seek reimbursement from any such party who does not honor its lien in accordance with its terms.

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I trust that the foregoing will be helpful to the parties in resolving this matter.

Sincerely,

Stanley Jay Shuman
General Attorney